

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA (Philadelphia)

\_\_\_\_\_  
THERESA MARIE SIMEONE, et al.,  
**Plaintiffs**

v.

\_\_\_\_\_  
BOMBARDIER-ROTAX GmbH, et al.,  
**Defendants**

:  
: CIVIL ACTION NO.: 2:02-cv-04852-  
: (BMS)  
:

:  
: **ANSWER TO FIRST AMENDED**  
: **COMPLAINT, CROSS-CLAIMS**  
: **AND JURY DEMAND ON BEHALF**  
: **OF BOMBARDIER INC.**  
:  
:  
:  
:

Defendant, Bombardier Inc., by its attorneys, responds as follows to Plaintiffs' First Amended Complaint:

**FIRST DEFENSE**

**THE PARTIES**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 1.
2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.
3. Defendant makes no response to the allegations contained in Paragraph 3, as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
4. Admitted in part, denied in part. Bombardier Inc. admits that it is a corporation organized and existing under the laws of Canada with a principal place of business in Montreal, Quebec,

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Canada. Bombardier Inc. denies that it is a "partner and in partnership and/or is doing business as Rotax and/or Bombardier-Rotax and/or as Bombardier Group". Defendant Bombardier Inc. admits that there exist divisions at Bombardier Inc. that are known as "Bombardier Motorized Consumer Products Group" and "Bombardier Recreational Products". Bombardier Inc. denies that it is "trading as the joint venture Bombardier-Rotax". Defendant Bombardier Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 4.

5. Defendant makes no response to the allegations contained in Paragraph 5 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

6. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

7. Defendant makes no response to the allegations contained in Paragraph 7 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

8. Defendant makes no response to the allegations contained in Paragraph 8 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

9. Defendant makes no response to the allegations contained in Paragraph 9 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

#### **JURISDICTION AND VENUE**

10. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. Defendant denies the allegations contained in Paragraph 11.

12. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

13. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13

### **BACKGROUND**

14. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14.

15. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15.

16. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 except to deny that Bombardier Inc. is in the "business of designing, manufacturing, selling, distributing and/or providing troubleshooting and product support for Rotax engines used in ultralight aircraft."

17. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 24.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 25.

26. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

28. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.

29. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29.

30. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30.

## **THEORIES OF RECOVERY**

### **COUNT I**

#### **(STRICT LIABILITY)**

#### **PLAINTIFFS V. THE BOMBARDIER DEFENDANTS**

31. Defendant, Bombardier Inc. repeats its response to each and every allegation contained in Paragraphs 1 through 30 as if same were fully set forth herein at length.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33.

- 34. Defendant denies the allegations contained in Paragraph 34.
- 35. Defendant denies the allegations contained in Paragraph 35.
- 36. Defendant denies the allegations contained in Paragraph 36.
- 37. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37.

38. Defendant denies the allegations contained in Paragraph 38.

WHEREFORE, defendant Bombardier Inc. demands judgment in its favor and against plaintiffs.

## COUNT II

### NEGLIGENCE

#### PLAINTIFFS V. THE BOMBARDIER DEFENDANTS

39. Defendant, Bombardier Inc. repeats its response to each and every allegation contained in Paragraphs 1 through 38 as if same were fully set forth herein at length.

40. Defendant denies the allegations contained in Paragraph 40.

41. Defendant denies the allegations contained in Paragraph 41.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant denies the allegations contained in Paragraph 43.

44. Defendant denies the allegations contained in Paragraph 44.

45. Defendant denies the allegations contained in Paragraph 45.

WHEREFORE, defendant Bombardier Inc. demands judgment in its favor and against plaintiffs.

**COUNT III**

**(RECKLESS, WILLFUL AND WANTON MISCONDUCT, FRAUD AND DECEIT)**

**PLAINTIFFS V. THE BOMBARDIER DEFENDANTS**

46. Defendant, Bombardier Inc. repeats its response to each and every allegation contained in Paragraphs 1 through 45 as if same were fully set forth herein at length.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48.

49. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49.

50. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. Defendant denies the allegations contained in Paragraph 51.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant denies the allegations contained in Paragraph 53.

54. Defendant denies the allegations contained in Paragraph 54.

55. Defendant denies the allegations contained in Paragraph 55.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies the allegations contained in Paragraph 57.

58. Defendant denies the allegations contained in Paragraph 58.

59. Defendant denies the allegations contained in Paragraph 59.

60. Defendant denies the allegations contained in Paragraph 60.

61. Defendant denies the allegations contained in Paragraph 61.

62. Defendant denies the allegations contained in Paragraph 62.

WHEREFORE, defendant Bombardier Inc. demands judgment in its favor and against plaintiffs.

**COUNT IV**

**(BREACH OF WARRANTY)**

**PLAINTIFFS V. THE BOMBARDIER DEFENDANTS**

63. Defendant, Bombardier Inc. repeats its response to each and every allegation contained in Paragraphs 1 through 62 as if same were fully set forth herein at length.

64. Defendant denies the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant denies the allegations contained in Paragraph 66.

67. Defendant denies the allegations contained in Paragraph 67.

68. Defendant denies the allegations contained in Paragraph 68.

69. Defendant denies the allegations contained in Paragraph 69.

70. Defendant denies the allegations contained in Paragraph 70.

WHEREFORE, defendant Bombardier Inc. demands judgment in its favor and against plaintiffs.

**COUNT VIII (sic)**

**NEGLIGENCE**

**PLAINTIFFS V. THE ENERGY COMPANY DEFENDANTS**

71. Defendant, Bombardier Inc. repeats its response to each and every allegation contained in Paragraphs 1 through 70 as if same were fully set forth herein at length.

72. Defendant makes no response to the allegations contained in Paragraph 72 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

73. Defendant makes no response to the allegations contained in Paragraph 73 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

74. Defendant makes no response to the allegations contained in Paragraph 74 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

WHEREFORE, defendant Bombardier Inc. demands judgment in its favor and against plaintiffs.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' decedents were guilty of contributory negligence.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, or in the alternative, the damages to which plaintiffs are entitled must be reduced under the doctrine of comparative negligence.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' complaint is barred due to the Court's lack of jurisdiction over the subject matter.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint is barred due to the Court's lack of jurisdiction over the person.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint is barred by improper venue.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint is barred due to the insufficiency of service of process.



**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint fails to state a cause of action upon which relief may be granted.

**EIGHTH AFFIRMATIVE DEFENSE**

The complained of occurrence was caused by third parties over whom defendant had no control.

**NINTH AFFIRMATIVE DEFENSE**

The damages alleged were the result of unforeseeable intervening or superseding acts of others independent of defendant which bars plaintiffs' cause of action.

**TENTH AFFIRMATIVE DEFENSE**

Any product furnished, manufactured, supplied, installed, repaired or sold by defendant was fit for the use intended and any damage sustained by Plaintiffs was caused in whole or in part by the misuse and/or alteration or modification of said product.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by virtue of the state of the art in manufacturing process.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to give proper and prompt notice of any alleged breach of warranty to this answering defendant and accordingly any claims based on breach of warranty are barred according to the provisions of the Uniform Commercial Code.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The punitive damage claims are unconstitutional under the due process clauses of the United States and Pennsylvania Constitutions.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint is barred due to assumption of risk.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred inasmuch as the characteristics of the product at issue are open and obvious.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred inasmuch as plaintiffs' decedents were adequately warned and/or instructed of unavoidably unsafe aspects, if any, of the product at issue.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The injuries and/or damages, if any, sustained by plaintiffs were caused solely or in part by the negligence of plaintiffs' decedent, which negligence, along with the Pennsylvania Comparative Negligence Act (42 Pa. C.S.A. §7102) bars or limits Plaintiffs' recovery on the claim set forth in Plaintiffs' First Amended Complaint.

**CROSS-CLAIM FOR CONTRIBUTION**

Defendant, Bombardier Inc., by way of cross-claim for contribution against certain codefendants alleges and says:

1. Defendant denies any and all legal liability and responsibility for the acts alleged in the First Amended Complaint.
2. If Defendant should be found liable to Plaintiffs, which liability is denied, Defendant asserts that all codefendants except, Bombardier-Rotax GmbH Motorenfabrik and Bombardier

Corporation, herein are joint tortfeasors with respect to any loss, liability or expense on account of Plaintiffs' demand for judgment.

WHEREFORE, Defendant, Bombardier Inc. demands judgment for contribution against all codefendants except Bombardier-Rotax GmbH Motorenfabrik and Bombardier Corporation.

**CROSS-CLAIM FOR INDEMNIFICATION**

Defendant, Bombardier Inc., by way of cross-claim for indemnification against certain codefendants alleges and says:

1. Defendant denies any and all legal liability and responsibility for the acts alleged in the First Amended Complaint.

2. If Defendant should be found liable to Plaintiffs herein, which liability is denied, said liability will only be secondary, passive, technical, vicarious, or imputed and the liability of all codefendants except, Bombardier-Rotax GmbH Motorenfabrik and Bombardier Corporation, herein is primary, active and direct.

WHEREFORE, Defendant Bombardier Inc. demands judgment against codefendants except Bombardier Rotax-GmbH Motorenfabrik and Bombardier Corporation, herein for indemnification in full with respect to any damages, which may be recovered against Defendant, Bombardier Inc., by Plaintiffs herein together.

**ANSWER TO CROSS-CLAIM FOR CONTRIBUTION AND INDEMNIFICATION**

Defendant, Bombardier Inc., by way of answer to cross-claim for contribution and indemnification heretofore asserted by any codefendant herein or which any codefendant shall hereinafter assert or third-party defendant herein says:

1. Defendant denies each and every allegation of each such cross-claim and further denies liability in any way to any codefendant or third-party defendant herein.

2. Defendant hereby incorporates by way of reference and asserts each and every separate defense that earlier appears in this pleading as a separate defense to the claims of Plaintiffs herein.

WHEREFORE, Defendant Bombardier Inc. demands that the Cross-claims be dismissed with prejudice and without costs.

**DEMAND FOR TRIAL BY JURY**

Defendant demands trial by jury on all issues.

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP**

By: 

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Attorneys for Defendant Bombardier Inc.

Dated: August 25, 2003

**CERTIFICATE OF SERVICE**

Jonathan Dryer, Counsel for defendant Bombardier Inc., hereby certifies that he caused copies of the foregoing Answer to Plaintiffs' First Amended Complaint to be served on the parties hereto by placing them in a United States Post Office mailbox, first-class postage prepaid, addressed as follows:

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Metropolitan Edison Company ("Energy Defendants")



Jonathan Dryer, Esquire

Dated: August 25, 2003